REMARKS

This application has been reviewed in light of the Final Office Action dated January 22, 2004. Claims 1-16 are pending in the application. Claim 6 is presently amended to remove redundancy and correct a typographical error.

In the Office Action, the Examiner rejected Claims 1-5 and 9-16 under 35 U.S.C. 103 (a) as being unpatentable over U.S. Patent No. 6,304,892 to Bhoj et al. (hereinafter "Bhoj"). Applicants respectfully traverses these rejections.

The Examiner continues to erroneously assert that Bhoj discloses "defining <u>classes</u> of service ... (figures 2, 5, NEWS SERVERS, E-MAIL SERVERS, WEB SERVER FARM, col. 9, lines 19-col. 10 lines 7) (and) defining a set of parameters to be measured <u>for each of said classes</u> (col. 4 lines 39-col. 6 lines 14, col. 6 lines 63-col. 10 lines 7)." (Emphasis added). Applicants respectfully submit that neither the referenced portions nor any other portions of Bhoj teach, suggest or otherwise allude to "classes of service" as claimed in the present application. "Classes of services" are described in the present application and claimed as an element in each of the presently pending claims. For example, the specification recites:

> "Within a virtual site, definitions for classes are also created. Each class implies certain agreed-to SLA metrics. For example, a 'gold' class may be defined to require higher performance than a 'silver' class. A hosted site is defined with no more than one class. Similarly, a user is defined with no more than one class. An operator defines the acceptance parameters of a class by entering the class name, and assigning servers to service that class. Servers may also be re-assigned by other web-farm entities as performance needs indicate. In addition, a class is defined by way of its subscribed error rate, response time, and bandwidth parameters. As an added feature, if a configuration operator attempts to delete a class definition from the database, the system will first check to see if the class is defined for any host, and will prevent deletion of assigned classes."
> (p. 11, lines 13-23).

Thus, classes are a function of acceptance levels which are a function of measured parameters/metrics. Classes are not the acceptance levels themselves nor the measured parameters/metrics or types of service as the Examiner seems to imply.

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Further to define what is meant by "classes" as opposed to types of service, claim 1 recites "defining classes of hosted cites and classes of users wherein each user and each hosted site belong to no more than one class". Claim 6 recites "a set of acceptance levels for said collected parameters wherein said acceptance levels depend on a class of service for at least one of host system, URL, hosted site, transaction, content, file type and user". The Examiner has not responded to Applicants' arguments in response to the previous office action with regard to claim 6. Applicants respectfully submit that Bhoj does not teach or suggest anything about classes of service as described and claimed in the present invention.

In contrast, Bhoj describes various types of back-end servers and various attributes that are meaningful for correct service behavior according to a service level agreement (SLA) (col. 7 lines 8-37). The various attributes as described must be quantifiable and measurable to be included in a contract specification. Various combinations of such attributes can be used to define a service level agreement. For example, in Bhoj, "a contract specification is defined by the triple (P, M, A), where P is the set of properties associated with the contract, A is the set of assertions agreed upon by the parties and M is the set of methods (or operations) available on the contract.... Assertions contain service-related agreements or guarantees. An assertion is an atomic group of statements that is agreed upon by the parties defining the contract...." (Col. 7 lines 38-50).

It is therefore clear that Bhoj describes various type of service level agreement having various combinations of attributes for which a service level is agreed upon by contract (the SLA). However, Bhoj does not teach or suggest anything about classes of service or grouping any attributes or assertions according to any class of service as claimed in the present invention. Applicants respectfully submit that the disclosure in Bhoj of different service level agreements which guarantee performance according to different groups of attributes which depend upon the type of service being delivered does not teach or suggest the claimed step of "defining classes of service" or "defining classes of services for at least one of host system, user, URL, posted site, transaction, content and file type" as claimed or defining classes of any sort.

Again, Applicants submit that the Examiner is not making a proper distinction between classes of services according to the present invention and different types of services for which

different service level agreements are described in Bhoj. A type of service (as in Bhoj) refers to a service that is measurable by a quantifiable package of attributes. Each attribute can be guaranteed to a specific level in a service level agreement. A class of service, on the other hand, as described in exemplary embodiments of the invention refers a set of specific levels of service for one or more attribute of a particular type of service. ("Each class implies certain agreed to SLA metrics" p. 11, line 14).

As another example, Bhoj describes some types of services as dedicated 56 Kbps, T-1, T-3, and OC-3 internet access services. A service level agreement for each of these types of services provides guarantees of a particular availability level, a particular monthly latency, a particular outage notification time, and a particular installation time for each type of services. Bhoj does not teach or suggest that any of these service levels agreements define classes such as a class that is guaranteed high availability (i.e. gold class of user) or a class that is guaranteed standard availability (i.e. a silver class of user); a low allowable latency class versus a standard allowable latency class, etc.. Nor does Bhoj describe a service which would be contemplated by the present invention wherein a class is guaranteed high service levels of a plurality of parameters (i.e. a gold class) versus another class which is guaranteed a lower service level for the same parameters (i.e. a silver class or standard class).

Since Bhoj does not teach or suggest each of the elements claimed in independent claims 1 or 9, Applicants respectfully submit that the Examiner has not made out a prima facia case of obviousness against claims 1-5 and 9-16 under 35 U.S.C. 103(a). Applicant submits that these rejections are therefore improper and should be withdrawn.

The Examiner rejected claims 6-8 under 35 U.S.C. 103(a) as being unpatentable over Bhoj in view of Fletcher et al. (hereinafter Fletcher) U.S. Patent No. 6,269,401. Applicants respectfully traverse these rejections.

Regarding Claim 6, in the previous office action the Examiner admitted that "Bhoj does not teach a set of acceptance levels corresponding to said collected parameters, a monetary process or determining which of said collected parameters exceed the corresponding acceptance level, and a

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reporting process that produces a report results of said monitoring processor (sic)." (p. 6, lines 11-14). In the present office action, the Examiner asserts that "Bhoj does teach a collection processor measuring and periodically collecting a set of defined parameters for said at least one back-end servers as shown in cols. 5-6 lines 65-34 and col. 7 lines 22-col. 10 lines 7, col. 11 lines 24-40 and col. 15 lines 7-18.
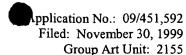
The Examiner indicated that "Applicants argue that neither Bhoj nor Fletcher teach a collection processor measuring and periodically collecting a set of defined parameters for said at least one back-end servers." The Examiner neglected to address or correctly characterize Applicants' argument and response to the previous office action in which Applicants assert that neither Bhoj nor Fletcher teach or suggest a collection processor measuring and periodically collecting a set of defined parameters for said at least one back-end server ... wherein said acceptance levels depend on at least one of a class of service for at least one of user, host system, URL, hosted site, transaction, content and file type." (Emphasis added.)

Applicants again respectfully submit that neither Bhoj nor Fletcher teach or suggest anything about acceptance levels that depend on any class of service as claimed in Claim. Since neither Bhoj nor Fletcher alone or in combination teach or suggest every element of independent claim 6, Applicants respectfully submit that the Examiner has not made out a prima facia case of obviousness against claims 6 -8 under 35 U.S.C. 103(a). Applicant submits that these rejections are therefore improper and should be withdrawn.

CONCLUSION

In view of the foregoing remarks, it is respectfully submitted that claims 1-16 presently pending in the application are believed to be in condition for allowance and patentably distinguish over the art of record. An early notice thereof is earnestly solicited. If the Examiner should have any questions concerning this communication or feels that an interview would be helpful, the Examiner is requested to call the Applicants' undersigned attorney.

Please charge any deficiency as well as any other fees that may become due at any time during the pendency of this application, or credit any over payment of such fees to deposit

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account no. 50-0369. Also, in the event that any extensions of time for responding are required for the pending application, please treat this paper as a petition to extend the time as required and charge deposit account no. 50-0369 therefore.

Respectfully submitted,

Dated: _4-22-04_

Brian L. Michaelis, Esq.
Reg. No. 34,221
Customer No. 21710
Attorney for Applicants

BROWN RUDNICK BERLACK ISRAELS LLP
Box IP, 18th Floor
One Financial Center
Boston, MA 02111
Tel: 1-617-856-8369
Fax: 1-617 856-8201

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